Supreme Court, U.S.
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No. 91-2005

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ROGER LEE SIMMONS,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,
METROPOLITAN LIFE INSURANCE COMPANY, and
ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT GENERAL ELECTRIC COMPANY'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE [1]

The petitioner, Roger Lee Simmons ("Simmons"), is a former employee of respondent General Electric Company ("GE")[2]. Simmons was employed at GE's gas tur-

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[1] The petitioner's statement of the case omits some basic facts which are material to the decisions rendered below and to this Court's consideration of whether certiorari should be granted. Therefore, in accordance with Supreme Court Rules 15.1 and 24.2, respondent takes this opportunity to present the court with a more accurate and informative statement of the case. The petitioner's rendition of the procedural history of this case is also insufficient and must be corrected.

[2] In accordance with Supreme Court rule 29.1, respondent GE declares that it has a number of subsidiaries in the United States and elsewhere. However, only a limited number of these subsidiaries

bine plant in Greenville, South Carolina from approximately March 13, 1978 until May 8, 1987. On October 31, 1987, Simmons initiated a claim against GE and Electric Mutual Liability Insurance Company ("Electric Mutual") under the South Carolina workers' compensation statutes.[3] Simmons alleged he had sustained an occupational disease or accidental injury to his respiratory system during the course and scope of his employment. Following several hearings and appeals involving this claim, workers' compensation benefits were awarded by the South Carolina Workers' Compensation Commission and affirmed by the state court. These benefits have been paid in full.

Simmons filed the present federal court actions on June 1 and 4, 1990[4] before a final disposition of his workers' compensation claims. His present claims are allegedly based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* Although inartfully drafted, Simmons' claims appear to allege he is due additional benefits under GE's employee benefit package, specifically including: (1) employee and dependent medical and dental insurance; (2) personal accident insur-

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have any outstanding equity or debt securities which are publicly held. These are: GECC Financial Corporation; General Electric Capital Corporation (formerly General Electric Credit Corporation); General Electric Capital Canada, Inc.; General Electric Credit International, N.V.; General Electric Financial Services, Inc.; Montgomery Ward Credit Corporation; Montgomery Ward & Co., Incorporated (50% GE owned); and CAMCO, Inc. (Canada) (51% GE owned).

[3] Electric Mutual is primarily responsible for all workers' compensation actions brought by GE employees or former employees against GE.

[4] These two separate Complaints were consolidated by the United States District Court for the District of South Carolina, Greenville Division.

ance; (3) weekly sickness and accident insurance; (4) long-term disability insurance; (5) dependent life insurance; (6) several savings and stock ownership options; and (7) pension benefits.[5] GE and The Metropolitan Life Insurance Company[6] ("Metropolitan") reviewed the actual language of these respective plans and determined the benefits due under each. *See Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975, 978 (4th Cir. 1987) (actual language of respective plans determines eligibility for benefits and if benefits are due, in what amount). As these amounts had either been paid or were being paid, the respondents moved for summary judgment on all claims.[7]

On September 25, 1991, after more than fifteen months of tedious litigation, United States District Court Judge Henry M. Herlong, Jr. accepted the recommendation of United States Magistrate Judge William M. Catoe, Jr. and granted summary judgment on all counts for respondents GE, Metropolitan and Electric Mutual. Simmons moved for a new trial or amended judgment under Federal Rules of Civil Procedure 59, 60, 61, and 62 on October 2, 1991. On October 4, 1991, Simmons filed a Notice of Appeal to the Fourth Circuit Court of Appeals. This Notice of Appeal was dismissed by the Fourth Circuit on December 27, 1991 as untimely under Federal Rule of Appellate Procedure 4(a)(4). Simmons' subsequent motion to extend the time for appeal was denied by the District Court on January 10, 1992. No appeal was taken from that District Court Order. Simmons now pe-

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[5] Simmons also alleged the actions of the respondents constituted a pattern of illegal activity under RICO. Both the magistrate and the district court found these allegations to be unfounded.

[6] Metropolitan is the insurance carrier for several of GE's employee benefit plans.

[7] Since February, 1991, Metropolitan has tendered a monthly check for $200.99 in long-term disability benefits. Simmons has refused to accept these payments and has returned each payment to counsel for Metropolitan.

titions this Court for review of the Fourth Circuit's ruling dismissing his appeal as untimely, as well as a ruling on the substantive merits of his action.

SUMMARY OF THE ARGUMENT

Simmons' petition for certiorari submits issues not properly before this Court. Simmons' appeal to the Fourth Circuit Court of Appeals from the September 25, 1991 District Court Order was dismissed by the Fourth Circuit as untimely. GE contends this petition is now an attempt to seek certiorari directly from a district court decision.

In addition, the questions presented by Simmons do not fit within the Supreme Court's criteria for granting a writ of certiorari. The questions presented concern only the parties directly involved and are not of sufficient gravity or importance to the general public to warrant review by this Court. In particular, the reasons asserted for review expressly present a matter of contractual interpretation which would require the Court to review and weigh the evidence and to discuss specific facts before ruling upon the correctness of the decisions below. Further, the reasons asserted for review are based upon an alleged conflict in the decisions of circuit courts which does not, in fact, exist. Simmons' grounds for review amount to nothing more than a complaint that the courts below did not agree with petitioner's interpretation of the applicable plan documents and did not grant him the relief requested.

ARGUMENT

I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE SIMMONS DID NOT TIMELY APPEAL THE LOWER COURT'S DECISION AND THE PETITION PRESENTS ISSUES NOT PROPERLY BEFORE THIS COURT.

On September 25, 1991, United States District Judge Henry M. Herlong, Jr. granted summary judgment to all respondents. On December 27, 1991, the Fourth Circuit dismissed Simmons' appeal as untimely. Simmons' subsequent motion to extend the time for appeal was denied by the District Court on January 10, 1992. No appeal was taken from this Order of the District Court. Instead, Simmons filed his petition for writ of certiorari with the United States Supreme Court.

Although characterized as a petition for a writ of certiorari from the Fourth Circuit decision, Simmons seeks direct Supreme Court review of the merits of his claims and in particular, of the decision of the district court. Such an appeal to the Supreme Court is improper without first exhausting the lower court appellate process. *See* Sup. Ct. R. 13 and 28 U.S.C. § 2101. The United States Supreme Court normally will not consider issues which have not been presented to the Court of Appeals. *See, e.g., Wood v. Strickland*, 420 U.S. 308 (1975); *Neely v. Martin K. Eby Constr. Co.*, 386 U.S. 317 (1967 (applying former Supreme Court Rule 40).

II. THE PETITIONER'S ASSERTED REASONS FOR GRANTING CERTIORARI DO NOT FIT WITHIN THE WELL-ESTABLISHED CRITERIA ESSENTIAL FOR REVIEW.

Simmons has asserted a number of reasons for granting certiorari. None of these reasons are compelling. The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was conferred upon the United States Supreme Court for two purposes: (1) to secure

uniformity of decisions among certain courts; and (2) to bring up questions of importance when it is in the public interest to have these issues decided by the court of last resort. *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 518, 530-31 (1957); *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923).

Supreme Court Rule 10 embodies the purposes set forth above by emphasizing the discretionary nature of review on a writ of certiorari. It also indicates the types or "character" of reasons that will be considered by the Court for review. The rule itself expressly declares that the reasons enumerated therein are not all-inclusive. However, for a case to be reviewed, the reasons asserted must either fall within Rule 10 or otherwise present matters of exceptional gravity or importance to the general public. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916) (jurisdiction to review judgments of courts of appeals by certiorari is to be exercised sparingly, and only in cases of peculiar gravity and general importance, or to secure uniformity of decision); *In re Woods*, 143 U.S. 202 (1892). The reasons asserted for review in this case do not satisfy the above-stated criteria.

A. The Reasons Asserted By Petitioner Present A Fact-Specific Question Of Contractual Interpretation Which Is Important Only To The Parties Directly Involved.

The reasons asserted for review by Simmons present a question of contractual interpretation which concerns only the parties directly involved in this dispute. Only Simmons, GE, Metropolitan, and Electric Mutual have any significant stake in this controversy. Simmons claims that the district court's interpretation of the contract was incorrect, while GE agrees with the court's interpretation. If this Court were to review that interpretation, the conclusion—whether an affirmance or a reversal—would still impact only the relatively few people who could as-

sert similar claims under that particular contract. That is not a sufficient ground for review.

Certiorari will not be granted to review a judgment of a court of appeals where the case, however important it may be to the petitioner, does not involve a question of gravity or general importance, or present a conflict between decisions of certain courts. *Fields v. United States*, 205 U.S. 292 (1907); *see also Rudolph v. United States*, 370 U.S. 269, 270 (1962) (writ of certiorari was dismissed as improperly granted for a case involving merely a review of findings of fact which would be of no importance except to the litigants themselves), *rehearing denied*, 371 U.S. 854 (1962). Certiorari generally will be denied where the grounds asserted for review require the Court to review and weigh evidence and to discuss specific facts in order to rule on the correctness of the decision below. *United States v. Johnston*, 268 U.S. 220, 227 (1925); *see also National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (great weight is given to fact-finding by a district court approved by a court of appeals); *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 226 n.2 (1975) (issue whether FTC consent order had been violated did not merit Supreme Court's grant of petition for certiorari to review a court of appeals' judgment, where such issue concerned only a particular order as applied to a discrete set of facts).

This is exactly what Simmons has asked the Court to do in this instance. Simmons was unable to get a federal court to agree with his interpretation of GE's plan documents. Now, Simmons asks this Court to review the facts, weigh the evidence, and interpret the contract in a manner consistent with his own interests. Such a self-serving endeavor is obviously of no importance to the general public. In addition, since the question presented is one of interpretation of a very specific provision of a contract, the question is not likely to recur or present a conflict among circuit courts in the future.

B. The District Court's And Fourth Circuit's Judgment Is Consistent With The Judgments Of Other Circuit Courts And Thus, There Is No Conflict As Asserted By Simmons.

Both the magistrate and the district court relied on the actual terms of the particular benefit plans and summary plan descripions in determining the benefits due Simmons. Simmons has apparently alleged the other circuit courts are in conflict on this issue. However, the circuit courts have been uniform in relying on the applicable plan provisions in determining a claimants' eligibility and accrual of benefits. *See, e.g., Pratt v. Petroleum Production Management, Inc. Employee Sav. Plan & Trust*, 920 F.2d 651 (10th Cir. 1990); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975 (4th Cir. 1987); *In re White Farm Equipment Co.*, 788 F.2d 1186 (6th Cir. 1986); *Delgrosso v. Sprang and Co.*, 769 F.2d 928 (3rd Cir. 1985). Simmons has not shown any circuit court which has deviated from this practice.

CONCLUSION

For the reasons stated above, respondent GE respectfully requests that Simmons' Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit be denied.

Respectfully submitted,

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